

**REMARKS**

The present Response is being filed under a Certificate of Mailing as indicated. Claims 1, 2, 7, 10, 11, 15, 18-19 and 23 remain pending. Claims 1, 10, 18 and 23 have been amended. Claims 3-6, 8-9, 12-14, 16-17, 20-22 have been withdrawn. Claim 24 has been cancelled.

**35 USC §112**

Claims 1, 2, 7, 10, 11, 15, 18, 19 and 23 were rejected under 35 U.S.C. § 112 as failing to comply with the written description requirement. Claims 1, 10, 18, and 23 have been amended to recite that the contact area includes an outer periphery and that the relief area is recessed from the outer periphery such that the relief area interrupts the outer periphery of the contact area. It is the Applicant's belief that this amendment is clearly shown in the disclosure. As shown in FIGS. 3A and 3B, the contact area 122 includes an outer periphery. The relief area 124 is recessed from the contact area 122 as shown in FIG. 3A. The relief area 124 interrupts the outer periphery of the contact area 122 as shown in FIG. 3A. The drawings are part of the written description and may be used to satisfy the written description requirement. *See Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1565 (Fed. Cir. 1991). Therefore, the Examiner's rejection to claims 1, 2, 7, 10, 11, 15, 18, 19 and 23 based on lack of written description is believed to be overcome.

**35 USC §103**

Claims 1, 2, 7, 10, 11 and 15 were rejected as being unpatentably over U.S. Patent No. 5,471,756 ("Bolanos") in view of U.S. Patent No. 6,926,741 ("Kolb"). As stated above, independent claims 1 and 10 have been amended to recite that the contact area has an outer periphery and that "the relief area is recessed from the outer periphery of the contact area, such that the relief area interrupts the outer periphery of the contact area." As shown in various figures of the specification, the contact area 122 includes an outer periphery that contacts the medullary canal. The relief area 124 is carved from the contact area 122, such that the relief area 124 is recessed from the outer periphery and interrupts the outer periphery of the contact area.

Bolanos does not disclose such a device. As stated in the Office Action, the substantially cylindrical portion 142 corresponds to the contact area of the presently claimed invention and the frustoconical joining region 144 corresponds to the relief area. However,

the frustoconical joining region 144 does not interrupt the outer periphery of the contact area. In fact, the substantially cylindrical portion 142, is, as its name suggests, a cylinder. Its outer periphery is not interrupted by a relief area. In other words, because the substantially cylindrical portion 142 is a cylinder, the outer periphery is continuous and not interrupted.

Kolb also do not disclose the limitation that the relief area is recessed from the outer periphery and interrupts an outer periphery of the contact area. Kolb discloses a cavity 50, which is internal to the stem 12. Page 3, paragraph [0047]. The cavity 50 does not interrupt the outer periphery of the contact area.

Furthermore, in order to prove a *prima facie* case of obviousness, there must be some motivation or suggestion to combine the references. The Examiner has not provided any reasoning as to why a lumen sizer would be combined with a hole to receive a rod to interconnect a stem to a centralizer to obtain the presently claimed invention. Instead, it appears that the present specification is being used as a roadmap. Therefore, for at least these reasons, claims 1, 10 and their dependents are believed to be allowable.

Claims 18, 19, 23 and 24 were rejected as being unpatentably over U.S. Patent No. 5,314,493 ("Mikhail") in view of Bolanos, et al in view of Kolb. Independent claims 18 and 23 also include the limitations that the contact areas include an outer periphery and that the relief area is recessed from the outer periphery of the contact area, such that the relief area interrupts the outer periphery of the contact area. Therefore, for the reasons stated above, Bolanos and Kolb do not disclose this limitation. Also, Mikhail does not disclose such features either. Therefore, claims 18, 23 and their dependents are believed to be allowable.

### **Conclusion**

For the above-described reasons it is respectfully submitted that the rejections to the claims have been overcome and that all remaining claims, namely claims 1, 2, 7, 10, 11, 15, 18-19 and 23 are currently in condition for allowance. A Notice of Allowance is respectfully requested.

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